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TC04499

Appeal number: TC/2015/02160

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INCOME TAX – late submission of individual tax return – Whether reasonable excuse for late submission of return – No.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WILLIAM JOHN CHRISTOPHER HARP

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

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**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AII**

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The Tribunal determined the appeal on 22 June 2014 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 2 March 2015 with enclosures, and HMRC's Statement of Case received by the Tribunal on 14 April 2015 with enclosures. The Tribunal wrote to the Appellant on 15 April 2015 indicating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. No reply was received by the Tribunal.

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DECISION

1. Introduction

5 This considers an appeal against penalties totalling £845 imposed by the Respondents (HMRC) under Paragraph 3 of Schedule 55 Finance Act 2009 for the late filing by the Appellant of his individual tax returns for the tax years 2011-2012 and 2012 – 2013.

2. Legislation

Finance Act 2009 Schedule 56
Taxes Management Act 1970, Section 59B (4)

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3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967
Clarks of Hove Ltd v Bakers' Union [1979] All ER 152
Rowland v HMRC [2006] STC (SCD) 536
15 Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)

4. Facts

The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. In this case HMRC say the return for the year ending 5
20 April 2012 was issued on 6 April 2012 and so the filing date was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return. The Appellant submitted his individual tax return electronically on 31 January 2013 and so submission was on time. The tax due for the year was £4,803.35. A balance of £7.46 at 31 January 2013 reduced that to £4,795.89. However payment of that amount was
25 not made by the appellant until 15 August 2014.

On or around 19 March 2013 HMRC issued a notice of penalty assessment in the sum of £239 being 5% of the tax unpaid at the penalty date of 3 March 2013.

On or around 14 August 2013 HMRC issued a notice of penalty assessment in the sum of £239 being 5% of the tax unpaid 5 months after the penalty date.

30 On or around 25 February 2014 HMRC issued a notice of penalty assessment in the sum of £239 being 5% of the tax unpaid 11 months after the penalty date.

5. In respect of the year ending 5 April 2013 a return was issued on 6 April 2013 and so the filing date was 31 October 2013 for a non-electronic return or 31 January 2014 for an electronic return. The Appellant submitted his individual tax return
35 electronically on 31 January 2014 and so submission was on time. The tax due for the year was £1,292.86. On 15 August 2014 the Appellant paid £821.97 of this sum. HMRC have agreed that the remaining £470.89 will be collected through the appellant's PAYE code in 2015-2016.

6. On or around 18 March 2014 HMRC issued a notice of penalty assessment in the
40 sum of £64 being 5% of the tax unpaid at the penalty date of 3 March 2014.

7. On or around 18 August 2014 HMRC issued a notice of penalty assessment in the sum of £64 being 5% of the tax unpaid 5 months after the penalty date.

5 8. On 4 September 2014 the Appellant's agent AGS Accountants and Business Advisers Limited wrote to HMRC appealing against the penalties and interest charges on the Self-Assessment liability of the Appellant.

9. They said "Our client has previously wrote to you stating that he would not be able to meet his liability in full on the deadline dates as he is currently going through a period of financial hardship. The company of which he is a shareholder and director of (Harixon Limited) was due a refund of CIS taxes for the year 2013/14 tax year amounting to £97,676.31 and our client was awaiting this refund to enable him to pay his Self-Assessment liability in full.

Our client has invested a lot of his personal money into Harixon Limited in order to ensure the going concern status of the company whilst awaiting the repayment of CIS taxes

15 As a result of this we feel the penalties and interest charges are unjust and would request that these be revoked...."

10. On 6 October 2014 HMRC replied saying that they did not agree that the Appellant has a reasonable excuse "because you are expected to have kept money aside to pay the tax bill when it is due. The tax is on money you have already received. Also waiting for payment from somewhere else is not considered a reasonable excuse...."

The letter gave details HMRC views on the subject of "reasonable excuse" and offered a review.

25 11. On 13 October 2014 the Appellant's agent wrote to HMRC about tax matters concerning both Harixon Limited and the appellant.

In respect of the Appellant the letter included

"Self assessment

30 As per our letters of dated 19 March 2014 and 7 July 2014, Mr Harp could not draw remuneration from the business due to due to cash flow difficulties partly created by HMRC's reluctance to issue the CIS refund for 2009/10 and the sizeable refund relating to 2013/14, which meant that Mr. Harp had to introduce personal funds. Although the CIS refunds were received in May 2014 , some time was needed to settle existing suppliers so Mr. Harp's personal situation did not improve until August 2014 when the personal tax liabilities were settled (excl surcharges)...."

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12. HMRC wrote to Harixon Limited on 15 November 2014 the letter included

"The company's employer record shows that

2009/10 Repayment of overpaid CIS deductions amounting to £8,539.25 was authorised 22 November 2013 and reallocated against Corporation Tax liability for accounting period ended 31 January 2013.

5 2012/13 Repayment of overpaid CIS deductions amounting to £48,956.46 was authorised and paid to the company.

2013/14 Repayment of overpaid CIS deductions amounting to £97,676.31 was authorised 5 May 2014 and after reallocation of £2,283.26 the balance was repaid to the company.....

10 The identified Self-Assessment liabilities were outstanding after the 2012/13 CIS refund was made to the company. In addition although the 2013/14 CIS refund was made to the company 5 May 2014 the liabilities were not paid until 18 August 2014. In accordance with the letter it states that the monies were used by the company to settle payments with its suppliers before Mr. Harp's personal tax liabilities were settled. This decision was made despite Mr. Harp being aware that his Self-
15 Assessment liabilities were still outstanding.

It has also been noted that the letter states that Mr. Harp's personal tax liabilities were paid but excluding the surcharges. However, from Mr. Harp's record in addition to interest charges arising from the late payment of tax liabilities there is also a Balancing Payment amounting to £1,292.86 for 2012/2013 which arose from Mr.
20 Harp's charge to Capital Gains. There is an outstanding balance of £492.76 on which interest is still accruing."

13. Appellant's further submissions

On 10 March 2015 the Appellant's agent wrote a letter to the Tribunal to appeal the case put forward against their client. They complained that although they had written
25 to HMRC on 4 September 2014 the reply dated 6 October 2014 had only been sent to the Appellant. It was therefore not until 25 February 2015 that the agent received the letter. In their response they said

30 "The main reason behind our client's inability to pay their Self-Assessment Income tax on time was because his company, Harixon Limited, was due large CIS tax refunds which HMRC held on to for significant amounts of time. This causes our client to have the following issues:

- 1) The client was unable to pay himself any money out of the business as insufficient working capital was available to cover the running costs of the business.
- 35 2) The client actually had to invest his own money into the business in order to meet the obligations to the various creditors of the business.

As a result the client has struggled to raise the necessary funds in order to pay his own Self-Assessment Income tax liabilities on time.

However once the CIS suffered had been refunded to our client's company he has been able to clear off the liabilities in full, aside from the penalties and interest.....”

14. HMRC's Further Submissions

- 5 HMRC say that Self-Assessment is based on voluntary compliance. Taxpayers who are within the Self-Assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.

10 HMRC say that the Appellant has been submitting Self-Assessment returns since 2006-07 and would have been fully aware of the due dates for making payments of tax and the penalty regime when payments were made after the deadline

15. HMRC say they expect a taxpayer to keep money to one side to pay his tax bill when it becomes due. HMRC say that they do not accept that shortage of funds is a reasonable excuse for the late payment of tax.

15 16. HMRC say that the penalties charged relate to the Appellant's self-assessed liability as an individual. The CIS refunds that the agent has referred to we due to a limited company. HMRC maintain that in this case the individual and limited company are separate entities for tax purposes and the liabilities of one cannot be deferred pending any repayment due to the other.

20 17. HMRC have considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009). They say special circumstances must be “exceptional, abnormal or unusual” (*Crabtree v Hinchcliffe*) or “something out of the ordinary run of events” (*Clarks of Hove Ltd. v Bakers' Union*). In their view there are no special circumstances which would allow them to reduce the penalty.

18. Tribunal's Observations

25 In respect of reasonable excuse the Tribunal accepts that shortage of funds is not of itself a reasonable excuse for the late payment of tax, however the reason for the shortage of funds might provide a reasonable excuse.

In respect of the return for the period ended 5 April 2012 an amount of £4,795 was due to be paid on 31 January 2013,

30 The Tribunal notes that the CIS money of £97,676.31 due to Harixon Ltd for 2013/2014 was not due until after 31 January 2013 and therefore even if the payment was delayed by HMRC it cannot constitute a reasonable excuse for the late payment of the appellant's tax return for the tax year ended 5 April 2012 for which payment was due on 31 January 2013.

35 The Tribunal notes that on 22 November 2013 HMRC authorised repayment of overpaid CIS deductions for the year 2009/2010 and this was reallocated against the company's corporation tax liability for the accounting period ended 31 January 2013 which was due on 1 November 2013.

5 HMRC have offered no explanation for this considerable delay for which they can be criticised. If they had paid earlier then Harixon Ltd may have been able to pay the Appellant remuneration which would have allowed the Appellant to pay the tax due on 31 January 2013. However the Tribunal are not convinced that Harixon Ltd. would have acted in that way. It was the Appellant's responsibility to pay the tax and not the company's.

The company's subsequent actions have shown that they have put settling with their suppliers before remunerating the appellant.

10 The company received a CIS refund of £48,956.46 in May 2013 but the Appellant's outstanding tax liability of £4,795.89 was not paid until over a year later on 15 August 2014.

The company received a CIS refund of over £90,000 on 5 May 2014 but the Appellant's outstanding tax liabilities were not paid until 18 August 2014

15 Thus the Tribunal does not accept that the delayed CIS payments to Harixon Limited provide reasonable excuse for the Appellant's late payment of tax for the year ended 5 April 2012

20 In respect of the year ended 5 April 2013 an amount of £1,292.86 remained unpaid on the penalty date of 3 March 2014. The Appellant claims that a non-payment was due to the delayed payment by HMRC of a CIS refund of £97,676.31. That repayment was made on 5 May 2014. Had the Appellant paid the tax outstanding for his Self-Assessment return within a few days of the company receiving this money then the delayed payment might have constituted a reasonable excuse but the company chose to settle with their suppliers first and £821.97 of the amount due was paid over 3 months later on 15 August 2014. The balance of £470.89 remains outstanding. In 25 these circumstances the Tribunal cannot accept that the Appellant had reasonable excuse for the late payment of the tax due in respect of his Self-Assessment return for the period ending 5 April 2013.

The Tribunal agrees with HMRC that it is the Appellant's responsibility to submit returns on time.

30 22. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree.

35 23. The Appellant has not established a reasonable excuse for the late submission of his individual tax returns for the periods 2011-2012 and 2012-2013. Therefore the appeal is dismissed and the penalties totalling £845 stand.

40 24. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax

Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**PETER R. SHEPPARD
TRIBUNAL JUDGE**

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RELEASE DATE: 25 June 2015